

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alfredo Gonzalez	Team: Squad #3	CCRB Case #: 201607222	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/09/2016 9:30 PM	Location of Incident: 102 West 128th Street	Precinct: 32	18 Mo. SOL 2/9/2018	EO SOL 2/9/2018	
Date/Time CV Reported Thu, 08/11/2016 7:31 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/23/2016 10:56 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Wintermute	03805	953574	032 PCT
2. POF Margaret Bauert	08181	952451	032 PCT
3. POM David Miller	15521	956933	032 PCT
4. POM Eric Stovall	06916	947520	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Wintermute	Force: Police Officer Christopher Wintermute used physical force against § 87(2)(b)	
B.POM Christopher Wintermute	Abuse: Police Officer Christopher Wintermute forcibly removed § 87(2)(b) to the hospital.	
C.POF Margaret Bauert	Abuse: Police Officer Margaret Bauert forcibly removed § 87(2)(b) to the hospital.	
D.POM David Miller	Abuse: Police Officer David Miller forcibly removed § 87(2)(b) to the hospital.	
E.POM Eric Stovall	Abuse: Police Officer Eric Stovall forcibly removed § 87(2)(b) to the hospital.	
F.POM David Miller	Abuse: Police Officer David Miller frisked § 87(2)(b)	
G.POM Christopher Wintermute	Abuse: Police Officer Christopher Wintermute searched § 87(2)(b)	
H.POM Eric Stovall	Abuse: Police Officer Eric Stovall searched § 87(2)(b)	
I.POM Christopher Wintermute	Discourtesy: Police Officer Christopher Wintermute spoke discourteously to § 87(2)(b)	
J.POF Margaret Bauert	Off. Language: Police Officer Margaret Bauert made remarks to § 87(2)(b) based upon ethnicity.	
§ 87(4-b), § 87(2)(g)		
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Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

Case Summary

§ 87(2)(b) filed this complaint with IAB, via telephone, on August 11, 2016. The CCRB received this case on August 23, 2016, under log number 16-29657.

On August 9, 2016, at approximately 9:30 p.m., § 87(2)(b) called 911 to file a complaint against the staff of § 87(2)(b) in Manhattan – alleging that they were harassing him. PO Christopher Wintermute, PO Margaret Bauert, PO Eric Stovall, and PO David Miller of the 32nd Precinct responded. PO Wintermute and PO Bauert were the first to arrive at the scene. Upon entering, they observed § 87(2)(b) arguing with the shelter’s staff. § 87(2)(b) refused to exit when commanded to, so PO Wintermute forcibly placed him in handcuffs and removed him outside (**Allegation A**). PO Stovall and PO Miller arrived as PO Wintermute was placing § 87(2)(b) in handcuffs. An ambulance was then requested for § 87(2)(b) as an Emotionally Disturbed Person (EDP) (**Allegations B – E**). While § 87(2)(b) waited outside, PO Miller frisked § 87(2)(b) and PO Wintermute searched his pockets (**Allegations F and G**). PO Stovall also searched § 87(2)(b)’s bags inside of the shelter while § 87(2)(b) waited outside (**Allegation H**). After approximately 20 minutes, EMS arrived and § 87(2)(b) was placed inside the ambulance. While inside the ambulance, PO Wintermute allegedly made comments regarding § 87(2)(b)’s socio-economic status (**Allegation I**). PO Bauert also allegedly called § 87(2)(b) “Hispanic trash” (**Allegation J**). PO Wintermute and PO Stovall accompanied § 87(2)(b) inside the ambulance to Harlem Hospital, where he was admitted to the psychiatric ward. No summonses were issued or arrests made as a result of this incident. § 87(4-b), § 87(2)(g)

This case went past the 90-day benchmark due to delays in obtaining video footage and a five-week delay in scheduling PO Stovall because he was out sick.



201607222_20170119_1507_DM.mp4

Snag Video 1



201607222_20170119_1507A_DM.mp4

Snag Video 2



201607222_20170125_1200_DM.mp4

Snag Video 3

Video footage was obtained from the Department of Homeless Services (DHS). The video footage showed § 87(2)(b) arguing with staff members inside of § 87(2)(b), as well as his interaction with the officers inside and outside the shelter. The videos also captured PO Wintermute conducting a search of § 87(2)(b)’s pockets outside of the shelter and PO Stovall conducting a search of § 87(2)(b)’s bags inside of the shelter.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation § 87(2)(g)
- As of January 17, 2017, § 87(2)(b) has not filed a Notice of Claim against the City of New York (BR 01).

- § 87(2)(b)

Civilian's and Officers' CCRB Histories

- § 87(2)(b)
- PO Bauert has been a member of the NYPD for four years. She has been the subject of three allegations stemming from one case. In CCRB 201605363, a question and a search allegation were exonerated, § 87(4-b), § 87(2)(g)
- PO Miller has been a member of the NYPD for two years. This is his first CCRB complaint.
- PO Stovall has been a member of the NYPD for eight years. This is his first CCRB complaint.
- PO Wintermute has been a member of the NYPD for four years. He has been the subject of one previous allegation stemming from one case, a discourtesy that was unsubstantiated. ■
§ 87(4-b), § 87(2)(g)
- § 87(2)(g)

Potential Issues

- § 87(2)(b) refused to sign a HIPAA form authorizing the release of his § 87(2)(b) medical records, and only provided the CCRB access to records generated by FDNY.
- DHS was unresponsive in providing the CCRB with the names and contact numbers of the staff members that may have witnessed the incident; however, they did provide an incident report and video footage of the incident.

Findings and Recommendations

Subject Officer Identification

- A forcible removal to the hospital allegation has been pleaded against all officers involved in the incident § 87(2)(g)

Allegations Not Pleaded

- **Abuse:** The DHS video shows PO Bauert picking up § 87(2)(b)'s bags off the floor inside the shelter and putting them on a table. Afterward, she handles the bags but it is unclear whether she enters and searches them because a staff member is obstructing the view. During her in-person statement, PO Bauert did not recall searching the bags. Additionally, the video shows PO Stovall conducting an extensive search of the bags after PO Bauert exits,
§ 87(2)(g)
- **Abuse:** The DHS video of the officers outside with § 87(2)(b) shows PO Miller frisking § 87(2)(b) during which PO Miller examines the area around § 87(2)(b)'s pants

pockets on the left side. § 87(2)(g)

Allegation A – Force: Police Officer Christopher Wintermute used physical force against

§ 87(2)(b)

Allegation B – Abuse of Authority: Police Officer Christopher Wintermute forcibly removed § 87(2)(b) to the hospital.

Allegation C – Abuse of Authority: Police Officer Margaret Bauert forcibly removed § 87(2)(b) to the hospital.

Allegation D – Abuse of Authority: Police Officer David Miller forcibly removed § 87(2)(b) to the hospital.

Allegation E – Abuse of Authority: Police Officer Eric Stovall forcibly removed § 87(2)(b) to the hospital.

On the date of the incident, § 87(2)(b) went to § 87(2)(b) in Manhattan – for a bed assignment because DHS had assigned him to that shelter. When he arrived, the shelter’s security staff refused him entry without informing why. One of the security staff members began “provoking” § 87(2)(b) by getting in his face and inviting him “to his privates.” § 87(2)(b) responded to the security staff member’s provocations by telling him to “back up.” There was another black male security staff member who did not do anything and just made sure that § 87(2)(b) and the other male staff member did not get into a confrontation. § 87(2)(b) described his exchange with the security guard as intense, but he and the security staff member did not need to be physically separated. § 87(2)(b) then called 911 and informed the operator that the shelter was refusing him entry to the shelter to which he had been assigned. § 87(2)(b) also requested that a supervisor be sent to the location. A few minutes later, PO Wintermute and PO Bauert arrived. PO Wintermute did not speak with § 87(2)(b) and instead went to speak with the shelter’s staff. § 87(2)(b) was unable to hear their conversation. Afterward, PO Wintermute commanded § 87(2)(b) to step out of the building, but § 87(2)(b) refused to do so because he belonged in that shelter, and § 87(2)(b) reminded PO Wintermute that it was he that had called 911 and that he had not committed a crime. PO Wintermute then became “aggressive and hostile,” grabbed § 87(2)(b) by the arms, turned him around, “slammed” him against a wall, “spun” him around, placed him over a table, and handcuffed him. PO Wintermute then spun § 87(2)(b) around, bent him over a table, and placed him in handcuffs. § 87(2)(b) did not suffer any pain or sustain any injuries during the handcuffing process. PO Wintermute also yelled at § 87(2)(b) and stated that he had given him “lawful directions.” Immediately after, § 87(2)(b) was escorted outside. While outside, § 87(2)(b) alleged that PO Wintermute was “badgering” him by asking why he had called 911 and why he was giving them a hard time. § 87(2)(b) continued to argue with PO Wintermute and told him that the NYPD comes to shelters and treats people like “trash” and like “they mean nothing.” He also told him that he was abusing his authority by placing him under arrest. PO Wintermute then responded, “I’m EDP-ing you. You’re not under arrest” (BR 04). § 87(2)(g)

PO Wintermute testified that he and PO Bauert responded to the men's shelter in regards to a call placed by § 87(2)(b) who accused the shelter's staff of harassing him. PO Wintermute was backing PO Stovall and PO Miller, but arrived to the location before them. PO Wintermute entered the shelter and found § 87(2)(b) by the front desk behaving irately. PO Wintermute was unable to figure out what the call was about because § 87(2)(b) was screaming and flailing his arms, but he was able to gather that § 87(2)(b) was upset about one of the shelter's policies. § 87(2)(b) was also screaming at the staff members and gesturing with his arms argumentatively. PO Wintermute was unable to recall any specific statements made by § 87(2)(b) but he noted that the staff looked intimidated. Given § 87(2)(b)'s agitated state, PO Wintermute asked him to step outside in order to de-escalate the situation, but § 87(2)(b) refused. PO Wintermute did not have the opportunity to speak to any staff members prior to asking § 87(2)(b) to step outside because of § 87(2)(b)'s behavior. When asked how § 87(2)(b) was being intimidating, PO Wintermute could not recall verbatim what § 87(2)(b) stated, but said that what § 87(2)(b) said caused him some alarm, and § 87(2)(b) seemed to be threatening him and the shelter's staff. When asked if § 87(2)(b) ever took any actions that would have caused him or the hospital staff to be intimidated, PO Wintermute stated that § 87(2)(b) did not take any physical actions and that there was not any "physicality" with him or with staff members. PO Wintermute gave § 87(2)(b) three lawful orders to step outside, but § 87(2)(b) refused and stated that he was not going to go outside. Afterward, PO Wintermute told § 87(2)(b) to turn around and placed him in handcuffs. PO Wintermute explained to § 87(2)(b) that he was not being arrested, but due to him not acting as a "rational person" and due to his combativeness, he was placing him in handcuffs for everyone's safety. § 87(2)(b) did not resist being placed in handcuffs. PO Wintermute immediately removed § 87(2)(b) from the building, but he continued to be combative and irate. PO Wintermute denied slamming § 87(2)(b) against a wall during the handcuffing process. While PO Wintermute was outside with § 87(2)(b) PO Bauert, PO Stovall, and PO Miller were inside speaking with the staff members. While outside, § 87(2)(b) continued to yell and called PO Wintermute a "fucking white piece of shit" multiple times. At some point, the officers who spoke with the shelter's staff determined that § 87(2)(b) would be considered an EDP and that an ambulance would be called. PO Wintermute was outside with § 87(2)(b) and he did not take part in making that determination. PO Wintermute believed that the other officers, upon seeing § 87(2)(b)'s behavior and in conjunction with the information about § 87(2)(b)'s medical past and medications provided by the shelter's staff, made the decision to label him an EDP and to transport him to the hospital. PO Wintermute did not personally speak with any staff members about § 87(2)(b)'s medical history. PO Wintermute also noted that § 87(2)(b) made threats to him outside of the shelter while they waited for the ambulance to arrive, which he noted in his memo book. PO Wintermute stated that § 87(2)(b) told him that he was going to have their jobs and not to worry because he was going to be "finished off." PO Wintermute considered the latter remark a death threat (BR 07, 19).

PO Bauert stated that § 87(2)(b) was screaming, moving his arms around, and yelling at the staff when she and PO Wintermute arrived, though she could not recall any specific statements that § 87(2)(b) made. PO Bauert also recalled that the shelter's staff was behind a counter and scared, and that they stated that they wanted § 87(2)(b) out of the building. The officers were unable to ascertain the reason for the 911 call because § 87(2)(b) would not calm down to speak with them. § 87(2)(b) was asked "at least" three times to exit, but he refused to do so, and was then placed in handcuffs. The staff also verified that § 87(2)(b) was taking

medication and that he caused a lot of trouble in that shelter. Based on what the staff told her, PO Bauert stated that she and her partners “pretty much marked him an EDP there.” PO Bauert also indicated that she asked the staff whether § 87(2)(b) was emotionally disturbed, to which they answered, “Absolutely.” PO Bauert and PO Wintermute changed the job to that of an EDP due to his combativeness, and Sector A requested an ambulance in regards. PO Bauert denied that there was ever any discussion in front of § 87(2)(b) about “EDP-ing” him or about labeling him an EDP. While they waited outside for the ambulance, § 87(2)(b) remained combative and stated to PO Bauert, “Fuck you, bitch. I’m going to take money from your children’s mouth so you can’t feed them. I’m going to take your job.” § 87(2)(b) also called PO Bauert a “white cunt” and stated, “I hope you die,” “Something is going to happen to you,” and, “I hope your kids die” (BR 08, 09).

PO Stovall testified that he and PO Miller entered the shelter after § 87(2)(b) had already been handcuffed. § 87(2)(b) was screaming at the staff and at the officers and was making threats, but PO Stovall could not recall specifically what § 87(2)(b) stated. PO Stovall also noted that § 87(2)(b) was not physically resisting. When asked if § 87(2)(b) directed his statements at someone specific, PO Stovall stated that he was yelling at everyone that was there. § 87(2)(b) was removed from the shelter quickly after he was handcuffed. Afterward, the staff informed PO Stovall that § 87(2)(b) had been kicked out of numerous shelters before. While outside, § 87(2)(b) continued to make threats, but PO Stovall could not specifically recall what § 87(2)(b) stated. When asked if § 87(2)(b) made any physical threats or threats of physical harm, PO Stovall stated that he did not. When asked if there was anything about § 87(2)(b)’s behavior that made him fear for his safety, PO Stovall stated, “Just the way he was acting...that’s why we called for an EDP.” When pressed on what specifically about § 87(2)(b)’s behavior made him fear for his safety, PO Stovall stated that § 87(2)(b) was fidgeting a lot, moving around, and cursing at everyone. PO Stovall did not recall the shelter’s staff expressing to him that they feared for their safety. PO Stovall stated that there was no discussion regarding what to do with § 87(2)(b) because he was “clearly mentally unstable,” which was evident in the manner that he was talking towards the officers and towards the staff. PO Stovall did not recall whether he or his partner requested the ambulance (BR 11).

PO Miller noted that he considered § 87(2)(b) to be a threat to his safety and the safety of others because § 87(2)(b) was “flailing his arms” during the incident. More specifically, PO Miller stated that § 87(2)(b) was moving his arms up and down, as if doing the upper-body portion of a jumping-jack. PO Miller stated that he and the other officers did not want him to hit somebody by mistake given that there were staff members nearby; however, no staff members explicitly stated to PO Miller that they were in fear for their safety. PO Miller also stated that § 87(2)(b) made general threats to the staff, and specific ones to PO Wintermute and PO Stovall, which were about physical harm, but he could not recall specifically what § 87(2)(b) said. PO Miller stated that during the incident, he was speaking with a female staff member at the shelter about § 87(2)(b)’s medication history, but he did not remember specifics of this conversation. PO Miller did not recall if the staff at the shelter mentioned anything about § 87(2)(b)’s past history or issues. PO Miller stated that they decided to get an ambulance for § 87(2)(b) but he could not recall who specifically made the decision. PO Miller noted that he “personally” believed that § 87(2)(b) was “sick” and emotionally “out of it” due to his noncompliance and refusal to listen to commands (BR 10).

EMT § 87(2)(b) testified that she responded to the shelter for an EDP job. EMT § 87(2)(b) was informed by one of the officers that § 87(2)(b) was very agitated and that the

staff at the shelter wanted him out. § 87(2)(b) continued being uncooperative inside the ambulance, would not answer the questions EMT § 87(2)(b) asked, and threatened to sue them. When asked if the officers asked her or her partner to make a determination on whether § 87(2)(b) was emotionally disturbed, EMT § 87(2)(b) stated that they did not. She stated that the officers believed him to be an EDP because he was very uncooperative and irrational, which pointed to § 87(2)(b) being a mentally disturbed person. She added that they did not call him an EDP because he is “crazy,” but because he was “uncooperative and stuff, so they just say EDP” (BR 12). EMT § 87(2)(b) had no independent recollection of the incident (BR 13).

The DHS video shows § 87(2)(b) arguing with a woman behind a table inside the shelter. PO Wintermute and PO Bauert then enter and gesture for § 87(2)(b) to go outside, but § 87(2)(b) seems to be non-compliant and seems to argue with them. § 87(2)(b) is gesticulating when speaking, but it is not in an aggressive or hostile manner, nor can it be described as flailing. PO Wintermute then approaches § 87(2)(b) and places one hand behind his back as if to guide him out, which prompts § 87(2)(b) to tense his body and to begin to turn away from PO Wintermute. Immediately after, PO Wintermute grabs § 87(2)(b) by the shoulders and places him against a wall. PO Wintermute then swings him around, places him over a table, and puts § 87(2)(b) in handcuffs. PO Stovall and PO Miller arrive to the shelter while § 87(2)(b) is being placed in handcuffs. § 87(2)(b) is then removed from the shelter (Snag Video 1). The DHS video that captures § 87(2)(b)'s time outside with the officers as they waited for the ambulance showed that § 87(2)(b) remained argumentative with the officers, but he did not become physically resistant or aggressive towards them (BR 23).

The DHS incident report noted that § 87(2)(b) arrived at § 87(2)(b) but was informed that he did not have a bed at the location. § 87(2)(b) requested that they hold his bags for him, but he was informed that the shelter was unable to, and that prompted § 87(2)(b) to become “verbally abusive and irate” and to “challenge” the security guards. It also noted that § 87(2)(b) began video recording the staff with his phone and that he called 911 and requested a supervisor to the location. Upon the officers’ arrival, § 87(2)(b) continued “to challenge” the NYPD, and he was subsequently handcuffed and removed from the facility. The report also noted that the NYPD requested EMS and § 87(2)(b) was escorted to § 87(2)(b) (BR 14).

The Prehospital Care Report prepared by EMT § 87(2)(b) did not list any past medical history or any medications § 87(2)(b) was taking at the time. The report noted that § 87(2)(b) was “very uncooperative” with everyone, stated that he was going to sue everyone, and that he expressed frustration that he called 911 but was the person to get handcuffed (Privileged Documents).

According to the Event Information document and the Event Unit Information document, PO Wintermute and PO Bauert arrived at the shelter at 9:27 p.m. and PO Stovall and PO Miller arrived at 9:28 p.m. in regards to a call placed by § 87(2)(b) alleging harassment by the shelter’s staff. At 9:30 p.m., PO Stovall’s unit requested EMS for an EDP, but specified that ESU was not needed. EMS arrived at the location at approximately 9:53 p.m. (BR 15).

An officer must use only the reasonable force necessary to gain control or custody of a subject. NYPD Patrol Guide, Section 221-01 (BR 24).

A person is considered to be emotionally disturbed, and therefore must be taken into protective custody, when he appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others. NYPD Patrol Guide, Section 221-13 (BR 16). Substantial physical injury is defined as any substantial impairment of physical condition, such as significant contusions or

lacerations requiring sutures. Serious physical injury is defined as a physical injury or illness that creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ or limb, such as broken/fractured bones, an injury requiring hospital admission, or a gunshot wound. NYPD Patrol Guide, Section 221-03 (BR 20). Other examples of serious injuries include: death, amputation or crushed limb, fractured skull, severe bleeding, unconsciousness, or admission to a hospital in critical condition. NYPD Patrol Guide, Section 211-19 (BR 21).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Abuse of Authority: Police Officer David Miller frisked § 87(2)(b)

Allegation G – Abuse of Authority: Police Officer Christopher Wintermute searched § 87(2)(b)

§ 87(2)(b)

Allegation H – Abuse of Authority: Police Officer Eric Stovall searched § 87(2)(b)

§ 87(2)(b) did not allege that he was frisked, searched, or that his belongings were searched, but video from the shelter captured PO Miller frisking § 87(2)(b) and PO Wintermute searching his pockets while he was outside, and Stovall searching § 87(2)(b)'s two bags inside of the shelter after § 87(2)(b) had been taken outside.

PO Wintermute acknowledged that he frisked § 87(2)(b) after he was handcuffed to make sure he did not have any weapons, but he acknowledged that there was no indication that § 87(2)(b) was in possession of a weapon. PO Wintermute explained that § 87(2)(b) was frisked for “precautionary reasons” because he was detained as an emotionally disturbed person. The frisk did not yield any contraband. PO Wintermute denied that he searched § 87(2)(b)'s pockets, and noted that the Patrol Guide and “police procedure” would not have allowed § 87(2)(b) to be searched. After viewing the DHS video, which shows PO Wintermute removing several items from § 87(2)(b)'s pants’ pockets, PO Wintermute asserted that he could not tell from the video whether he entered any pockets to remove items because the video was “grainy.” PO Wintermute, however, acknowledged that the video captured him handing some items to PO Bauert. PO Wintermute did not have any independent recollection of entering § 87(2)(b)'s pockets or of the items that he handed over, but he stated that if items were removed from § 87(2)(b)'s pockets, they would have been removed because they were a sharp object or something that could have been used to hurt himself or others, which is “routine” when dealing with EDPs. When asked if keys would be considered an item that can be used as a weapon, PO Wintermute answered affirmatively, though he noted that he had not received any specific training regarding the removal of keys from EDPs. PO Wintermute confirmed that § 87(2)(b) was in handcuffs while they waited outside and during the ambulance ride to the hospital (BR 7, 19).

PO Miller did not note that a frisk of § 87(2)(b) was conducted (BR 10).

PO Stovall noted that § 87(2)(b) had a backpack and a hygiene bag, and he acknowledged searching both items. PO Stovall added that they had to make sure that there were no knives or weapons because he was “not going to put someone inside an ambulance with a loaded gun or a knife.” PO Stovall stated that there was no indication that § 87(2)(b) was in possession of a weapon. PO Stovall noted that it is standard procedure to search belongings when EDPs are transported to the hospital, “just to make sure.” PO Stovall also confirmed that § 87(2)(b) was not considered to be under arrest during this incident. The shelter’s staff did not give the officers any information about a weapon (BR 11).

PO Bauert did not recall whether § 87(2)(b) had made any statements threatening the officers’ safety or the staff members’ safety. PO Bauert did not recall if any staff members mentioned that § 87(2)(b) had a weapon. When asked if there was any reason to believe that § 87(2)(b) had a weapon on his person, PO Bauert stated, “I don’t remember that?” and that she could not “say for sure.” PO Bauert could not recall whether she observed any bulges on § 87(2)(b).

§ 87(2)(b)'s person that were indicative of a weapon. PO Bauert added that they had simply responded because he was screaming; they had not responded to the location to "check him out" or to see if he had a weapon. PO Bauert was asked whether the circumstances of the case would have warranted a search of § 87(2)(b)'s bag, to which she responded, "I couldn't tell you. If there was, I can't remember." PO Bauert was then asked if it is standard procedure to search the belongings of EDPs that are being transported to the hospital, to which she responded, "We don't go through people's things to randomly search. There would have to be a reason" (BR 08, 09).

Snag video 3 depicts PO Miller frisking § 87(2)(b)'s pants' pockets and legs while PO Wintermute is holding on to him. PO Wintermute then reaches into § 87(2)(b)'s right back pocket, after which he removes an item (possibly a wallet) and hands it to PO Bauert. PO Wintermute also reaches into § 87(2)(b)'s left pants' pocket and removes some unidentified items and some keys (see Snag Video 3, BR 25).

Snag video 2 depicts PO Stovall entering the shelter after § 87(2)(b) has been removed. § 87(2)(b)'s bags are on a table and PO Stovall can be seen examining them, though the view is partially blocked by one of the security guards. Eventually, the security guard moves and PO Stovall is captured entering § 87(2)(b)'s backpack and searching it for approximately three minutes (see Snag Video 2).

Officers are justified in conducting a frisk for weapons prior to placing a civilian inside of a patrol car, even without a reasonable basis for fearing for their safety. People v. Smith, 134 AD3d 1453 (BR 22). In order to search a person, an officer must have probable cause to believe that the person is either armed or has committed a crime, or incident to an arrest. People v. Debour, 40 N.Y.2d 210 (1976) (BR 18).

§ 87(2)(g)

§ 87(2)(g)

Allegation I – Discourtesy: Police Officer Christopher Wintermute spoke discourteously to

§ 87(2)(b)

Allegation J – Offensive Language: Police Officer Margaret Bauert made remarks to § 87(2)(b) based upon ethnicity.

In his in-person statement, § 87(2)(b) alleged that after he was placed inside the ambulance, PO Wintermute and PO Bauert came inside and continued “badgering” him. PO Wintermute allegedly made a comment about § 87(2)(b) being on welfare and that § 87(2)(b) was collecting and living off of their taxes. PO Bauert also allegedly called § 87(2)(b) “Spanish trash.” § 87(2)(b) stated that a Hispanic female EMT was inside the ambulance at the time the statements were made and likely heard them (BR 04). In his phone statement, § 87(2)(b) did not allege that PO Wintermute made any discourteous statements towards him, and he attributed the discourteous statements regarding his socio-economic status – “lowlife” and “homeless scum” – and the offensive language remarks – “Puerto Rican trash” – to PO Bauert (BR 05).

PO Wintermute denied that he, or any other officer, made any remarks regarding § 87(2)(b)'s socio-economic status, and he denied that PO Bauert spoke offensively to § 87(2)(b). PO Wintermute also noted that § 87(2)(b) was verbally abusive and called him a “fucking white piece of shit” (BR 07). PO Bauert denied making any discourteous statements regarding § 87(2)(b)'s economic status or his ethnicity. PO Bauert also noted that § 87(2)(b) stated to her, “Fuck you bitch,” and called her a “white cunt” (BR 08, 09). PO Stovall and PO Miller denied that PO Wintermute and PO Bauert spoke discourteously to § 87(2)(b) or made offensive remarks to him, and they did not mention any discourteous or offensive remarks made by § 87(2)(b) (BR 10, 11).

EMT § 87(2)(b) testified that she did not hear any officers make an offensive remarks regarding § 87(2)(b)'s race, and she did not hear an officer state that § 87(2)(b) was “Hispanic trash” or “Puerto Rican trash.” EMT § 87(2)(b) added that § 87(2)(b) was the individual speaking offensively, and at one point referred to her as a lesbian and stated, “You lesbian women think you know it all.” § 87(2)(b) also stated to EMT § 87(2)(b) “Shut the fuck up, you lesbian,” when she attempted to ask him questions. EMT § 87(2)(b) did not hear any officers make statements referencing that § 87(2)(b) is homeless or on welfare. EMT § 87(2)(b) also noted that § 87(2)(b) referred to PO Wintermute as “white trash,” a “spick,” and told him that he had a “lowlife job” (BR 12).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

[Redacted text block]

Squad: _____

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date